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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ASHHOK UMASHANKAR et al.,

Plaintiffs and Appellants,

v.

BRIAN RADOO et al.,

Defendants and Respondents.

A155633

(Humboldt County  
Super. Ct. No. DR180395)

**MEMORANDUM OPINION<sup>1</sup>**

This appeal by plaintiffs and appellants Ashok Umashankar, Collin Danforth, Luke Danforth, Ethan Morton and Jacob Risch (collectively, appellants) is from an order disqualifying their counsel, Steve Whitworth, in an action they filed against, among others, defendants and respondents, Brian Radoo and Bobby Mohamed, appellants' former business partners or associates in a limited liability company called W.U.R.M. Assets, LLC (WURM).

Whitworth represented WURM in connection with the drafting of articles of incorporation and of a management agreement among the members of WURM, as well as other matters concerning WURM's formation. He was also designated as WURM's agent for service of process and appears to have served as corporate counsel for WURM,

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<sup>1</sup> We resolve this case by memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1. (See also *People v. Garcia* (2002) 97 Cal.App.4th 847, 853–855.)

a role that at one point involved the representation of WURM in a lawsuit in which Whitworth obtained a restraining order (TRO) against a disgruntled member, Scott Wallace, when Wallace was asked to leave the business (the Wallace litigation).

Whitworth handled the settlement of the Wallace litigation for WURM, and in the course of that engagement represented the members of WURM as well as the corporate entity, since the TRO was designed to protect the members of WURM from threats being made by Wallace. Thus, in the course of negotiating the settlement—which was eventually carried out pursuant to a settlement agreement that all of the members of WURM signed—Whitworth entered an appearance in the TRO litigation for Radoo and Mohamed, along with Umashankar, the Danforths, Morton and Risch.

Six months after the settlement of the Wallace matter, Umashankar was fired as general manager of WURM, which precipitated another dispute among members of WURM. In connection with that dispute, Whitworth filed a lawsuit on behalf of Umashankar, the Danforths, Morton and Risch, as plaintiffs, against, among others, Radoo and Mohamed, as defendants, alleging various tort claims. Radoo and Mohamed moved to disqualify Whitworth on the ground that, as a result of his prior representation of WURM he could not sue them without breaching his continuing duties of confidentiality and loyalty.

The trial court granted the disqualification motion, and appellant appealed. Here on appeal, Radoo and Muhammed failed to file a responding brief.

We agree with appellants that the disqualification order must be reversed. Radoo and Muhammed have not carried their burden to show that they, as individuals, had a current attorney-client relationship with Whitworth at the time he filed suit against them on behalf of appellants. Other than the representation of Radoo and Mohamed in connection with the settlement of the Wallace litigation, Whitworth represented WURM the corporation, not the members of WURM as individuals. (See *Jacuzzi v. Jacuzzi Bros., Inc.* (1963) 218 Cal.App2d 24, 29; *Meehan v. Hopps* (1956) 144 Cal.App.2d 284, 292–293; *Petty v. Superior Court* (1952) 116 Cal.App.2d 20, 29–31.) Absent a current attorney client relationship with respondents as individuals when Whitworth brought suit,

they were required to show that there was a substantial relationship between the subject matter of this action and the subject matter of Whitworth's past representation of them in connection with the Wallace litigation. (*Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 705.) This they failed to do.

Granted, Whitworth, as corporate counsel to this small, closely held corporation, may have received confidential information from and about its members, but information shared with and among the members may be confidential as to the rest of the world, yet is not confidential as to each other. Nor has there been any showing that, even in the absence of a formal attorney-client relationship between Whitworth and Radoo and Mohamed there is some basis to infer that Whitworth received confidential information from Radoo and Mohamed "preliminary to" the formation of an ongoing attorney client relationship of respondents as individuals.

#### **DISPOSITION**

Reversed. Appellants shall recover their costs.

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STREETER, Acting P.J.

We concur:

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TUCHER, J.

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BROWN, J.